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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

ROBERT M. BUSH et al., Plaintiffs and Appellants, v. MONETTE L. LENNOX et al., Defendants and Respondents.	H024725 (Santa Clara County Super.Ct.No. CV778215)

Plaintiffs sued defendants, seeking to set aside various conveyances as fraudulent. At the close of plaintiffs' case, the trial court rendered judgment for defendants. Plaintiffs challenge the defense judgment, claiming it is unsupported by the evidence. For reasons explained below, we reject plaintiffs' contentions. We therefore affirm the judgment.

FACTUAL BACKGROUND

The Parties

The two plaintiffs are Robert M. Bush, suing for himself and as the administrator of the estate of his father Bernard Bush, and Manuel DeLeon. The three defendants are Monett Lennox, P.J. Lichtanski, and Ciriaco Reyes, Jr.

Defendants' Transactions and Conveyances

Defendant Lennox owned a residence in Saratoga. In 1985, she formed Escondido Properties, Inc. for investment purposes. She capitalized the corporation with two

promissory notes, one for $50,000 and one for $250,000. The notes were secured by deeds of trust against her residence.

In 1988, Escondido assigned its rights under the Lennox notes and deeds of trust to G.P.C. Co., Ltd. In addition, Lennox gave GPC a $200,000 promissory note secured by yet another deed of trust against her residence, which was recorded in 1990. Both transactions were investments in GPC, which, in turn, was to invest in a Japanese yogurt franchise. The yogurt venture failed.

In 1991, GPC sold Lennox's $200,000 promissory note to defendant Reyes for $180,000. In 1994, Lennox filed for bankruptcy. Reyes obtained an order from the bankruptcy court relieving him from the bankruptcy stay. He then foreclosed on the residence. The trustee under the deed of trust conveyed the residence to Reyes. Reyes, in turn, conveyed the residence to defendant Lichtanski.

Lennox lives in the residence under a rental agreement obligating her to pay the existing mortgage and property taxes.

Plaintiffs' Judgments Against Lennox

Lennox befriended plaintiff Bush in 1987. Having obtained Bush's power of attorney in 1991, Lennox handled Bush's financial affairs and she also cared for his elderly father while Bush left the state for medical treatment. Upon Bush's return, Lennox could not account for his money. In 1995, Bush sued Lennox. In 1998, Lennox stipulated to a judgment in favor of Bush for $170,000.

Lennox befriended plaintiff DeLeon sometime between 1992 and 1994. DeLeon invested $85,000 in an island resort development in which Lennox was involved. He later lost the entire investment. In 1994, he filed an adversary claim for fraud against Lennox in her bankruptcy proceeding. In 1998, DeLeon obtained a fraud judgment against Lennox for $85,000.

PROCEDURAL HISTORY

In 1998, plaintiffs filed this action in a quest to satisfy their judgments from equity in the home where Lennox resides, which she previously owned. Plaintiffs attacked every conveyance in the chain of title, starting with the 1988 Lennox-to-GPC note and deed of trust. Plaintiffs based their action on the Uniform Fraudulent Transfer Act (UFTA), which permits defrauded creditors to reach property in the hands of a transferee. (See, Civ. Code, §§ 3439 – 3439.12.)[1] Plaintiffs asserted that defendants actively collaborated to shield the residence from Lennox's creditors.

The case eventually proceeded to bench trial in 2002.

Plaintiffs introduced trial evidence pointing to a close personal relationship among defendants. For example, they credited that (1) Lennox still lived in the residence; (2) Lichtanski used the residence to secure bail for Lennox after she was arrested in 1998 and 1999 for elder abuse of Bush's father; and (3) Lichtanski used the residence to secure payment of Lennox's criminal defense fees. Plaintiffs also faulted Lennox for failing to (1) obtain money for her promissory notes to Escondido and GPC; (2) pay the promissory notes; and (3) list GPC or Escondido as creditors in her bankruptcy case.

At the close of plaintiffs' case, defendants moved for judgment. (Code Civ. Proc., § 631.8.) The trial court granted the motion, but permitted plaintiffs to reopen their case to offer new evidence to "rehabilitate" their claims. After hearing and considering that evidence, the court nevertheless found in defendants' favor.

First, the trial court concluded that the only conveyance that plaintiffs could attack was the 1988 Lennox-to-GPC deed of trust. In reaching that conclusion, the court applied section 3439.04.[2] That section generally classifies a debtor's conveyance as

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[1] Further statutory references are to the Civil Code unless otherwise specified.

[2] Section 3439.04 provides: "A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation as follows: [¶] (a) With actual intent to hinder, delay, or defraud any creditor

fraudulent if made with actual intent to hinder, delay, or defraud a creditor, or, in the case of insolvent debtors, if made without receiving a reasonably equivalent value in exchange. The trial court reasoned that section 3539.04 "specifically requires a debtor-creditor relationship." As the court put it, "the evidence is undisputed that no debtor-creditor has ever existed between these plaintiffs and GPC Co., Ltd., defendant Reyes, or defendant Lichtanski . . . ." For that reason, the court concluded, Reyes and Lichtanski could not be reached under the statute. Moreover, even as to the 1988 transfer by Lennox, the court found that plaintiffs had presented no credible evidence that Lenox had executed that deed of trust with actual intent to defraud creditors or without receiving a reasonably equivalent value in exchange. As to the latter point, it cited Lennox's testimony to the effect that she received equity interests in GPC in exchange for the secured promissory notes. The court further opined that the applicable seven-year statute of limitations barred the action in any event. (See § 3439.09, subd. (c).)[3] The court subsequently entered judgment for defendants.

Plaintiffs brought this timely appeal.

ISSUES

Plaintiffs claim three errors on appeal. First, they assert, the trial court erred in ruling that the post-1988 transfers by Reyes and Lichtanski were not actionable under the UFTA. In addition, plaintiffs urge, the evidence is insufficient to support the trial court's

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of the debtor. [¶] (b) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor: [¶] (1) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or [¶] (2) Intended to incur, or believed or reasonably should have believed that he or she would incur, debts beyond his or her ability to pay as they became due."

[3] Section 3439.09 provides in part: "(c) Notwithstanding any other provision of law, a cause of action with respect to a fraudulent transfer or obligation is extinguished if no action is brought or levy made [fn] within seven years after the transfer was made or the obligation was incurred." (The footnote indicating that the double word was in the chaptered copy of the statute.)

factual determinations that the transfers were not fraudulent. Moreover, plaintiffs contend, the court erred in applying the statute of limitations to the 1988 transaction by defendant Lennox.

STANDARD OF REVIEW

As plaintiffs correctly observe, the trial court's legal rulings present a question of law for our *de novo* review. Thus, for example, we independently review the court's interpretation of the UFTA. (*People ex rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 432.)

As to the trial court's evidentiary determinations, plaintiffs assert that the substantial evidence standard applies. On that point, we respectfully disagree. The familiar substantial evidence standard typically is implicated when a defendant challenges a *plaintiff's* judgment as unsupported by sufficient evidence. But where the trier of fact has found that the party with the burden of proof failed to carry it, the question is not whether substantial evidence supports the judgment. The question instead is whether the trial court's finding of failure of proof can be sustained. (See *Roesch v. De Mota* (1944) 24 Cal.2d 563, 570-571.) "The problem here is not whether the appellants . . . failed to prove their case by a preponderance of the evidence. That was a question for the trial court and it was resolved against them. The question for this court to determine is whether the evidence compelled the trial court to find in their favor on that issue." (*Ibid.*) A defense judgment that rests on failure of proof will be upheld unless the plaintiff's evidence is "of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding." (*Id.* at p. 571.) Thus, as to the factual questions presented in this case, we consider whether the plaintiffs' evidence entitles them to judgment as a matter of law.

DISCUSSION

I. The UFTA

The governing statute requires a plaintiff creditor to prove that the defendant debtor (a) had actual intent to hinder, delay, or defraud a creditor when the debtor made the transfer, or (b) failed to receive fair value in exchange and was or became insolvent. (*Annod Corp. v. Hamilton & Samuels* (2002) 100 Cal.App.4th 1286, 1294.) "Section 3439.04 is construed to mean a transfer is fraudulent if the provisions of either subdivision (a) or subdivision (b) are satisfied." (*Ibid.*)

Plaintiffs complain about the trial court's legal ruling that the post-1988 conveyances were not vulnerable to plaintiffs' attack.[4] But, as the trial court correctly concluded, section 3439.04 generally applies only to transfers by "debtors." (Cf., *Weisenburg v. Cragholm* (1971) 5 Cal.3d 892, 897 [under UFTA, plaintiff must be a "creditor" of the transferor].) Defendants Reyes and Lichtanski were not themselves plaintiffs' debtors; rather, they were transferees, holding title only after foreclosure of Lennox's interest in the residence.

Under the statute, transferees may be held liable only on sufficient proof that they "participated, with guilty knowledge, in a scheme to secrete assets in order to hinder and delay and ultimately to defraud creditors of the bankrupt transferor." (*Cohen v. Heavey* (1968) 261 Cal.App.2d 766, 771. See also, e.g., *Stearns v. Los Angeles City School Dist.* (1966) 244 Cal.App.2d 696, 719.) Furthermore, subsequent transferees have a statutory defense under the UFTA, so long as earlier holders in the chain of title received their

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[4] In its statement of decision, the court phrased its ruling on this point by stating that plaintiffs "have no legal standing" to challenge the transfers involving Reyes and Lichtanski. More precisely, the resolution of the issue depends on lack of substantive liability under the statute, not on lack of standing. In any event, the court's lack of precision in stating the basis for its decision does not invalidate its judgment. (See, e.g., *Mike Davidov Co. v. Issod* (2000) 78 Cal.App.4th 597, 610 [trial court decision correct on any theory will be affirmed regardless of stated grounds].)

transfers in good faith and for reasonably equivalent value. (§ 3439.08, subd. (a). See *In re Sexton* (Bankr. N.D. Cal. 1994) 166 B.R. 421, 426.)

Thus, the post-1988 conveyances to Reyes and Lichtanski could be invalidated only on adequate proof: (1) that the initial 1988 Lennox-to-GPC conveyance was fraudulent, or (2) that Reyes and Lichtanski themselves were fraudulent transferees. The trial court found no proof of either.

II. The Evidence

As we have explained, under the appropriate standard of review, plaintiffs' only arguable evidentiary issue is that they were entitled to judgment as a matter of law. But plaintiffs make no such argument. Nor would such an argument succeed, given the disputed state of the evidence. The evidence favoring Lennox on intent to defraud suggested that she made the conveyance to GPC for legitimate business purposes; the evidence favoring Lennox on fair value, specifically mentioned by the trial court, suggested that Lennox received equity in GPC for her promissory note. Even if plaintiffs' evidence had been "uncontradicted and unimpeached, . . . it would not necessarily follow that it was of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding in favor of payment." (*Roesch v. De Mota, supra,* 24 Cal.2d at p. 571.)

In short, the record amply supports the trial court's conclusion that plaintiffs failed to meet their burden of proof.

III. The Statute of Limitations

Plaintiffs also complain about the trial court's legal ruling on the statute of limitations question. But discussion of the point is unnecessary given our resolution of the other issues in the case.

DISPOSITION

The judgment is affirmed.

Wunderlich, J.

WE CONCUR:

Elia, Acting P.J.

Mihara, J.